

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**OHIO VALLEY ENVIRONMENTAL  
COALITION, INC.; WEST VIRGINIA  
HIGHLANDS CONSERVANCY, INC.;  
and SIERRA CLUB,**

**Plaintiffs,**

**and**

**APPALACHIAN HEADWATERS, INC.,**

**Nonparty in whose favor an order has been entered,**

**v.**

**ERP ENVIRONMENTAL FUND, INC.,**

**Defendant,**

**and**

**VCLF LAND TRUST, INC.**

**Nonparty against whom an order may be enforced.**

**MOTION TO ENFORCE THE SECOND MODIFIED CONSENT DECREE AND  
SELENIUM SETTLEMENT AGREEMENT AND AWARD ATTORNEY'S FEES**

Plaintiffs in this action, along with Appalachian Headwaters, Inc. (hereinafter “Headwaters”), a nonparty in whose favor an order has been entered entitled to seek enforcement of that order pursuant to Federal Rule of Civil Procedure 71, hereby respectfully request that the Court enforce the Second Modified Consent Decree, and the Selenium Settlement Agreement incorporated within it, entered by the Court on October 7, 2016. CM/ECF #105. For the reasons set forth in the accompanying memorandum and supporting evidentiary material, Plaintiffs and Headwaters request the following relief against Defendant and VCLF Land Trust, Inc. (hereinafter,

“VCLF”), a nonparty against whom relief may be ordered under Federal Rule of Civil Procedure 71:

1. An Order declaring Defendant and/or VCLF to have failed to perform the obligations set forth in Paragraph 13 of the Selenium Settlement Agreement;
2. An Order specifically enforcing the Second Modified Consent Decree and the Selenium Settlement Agreement, by ordering the following:
  - a. Directing Defendant and/or VCLF (i) to pay to Headwaters, via cashier’s check or electronic funds transfer and within 14 days, an amount equal to VCLF’s arrearage, as of the date of the payment, resulting from its nonpayment of its monthly obligation of \$150,000 per month under Paragraph 13 of the Selenium Settlement Agreement (\$1,950,000 as of March 1, 2019); and (ii) to pay to Headwaters, via cashier’s check or electronic funds transfer on the first of each month thereafter through and including October 1, 2019, \$150,000 in accordance with Paragraph 13 of the Selenium Settlement Agreement; and
  - b. Directing Headwaters to endorse and deliver the membership certificate in the Virginia LLC to VCLF Land Trust, Inc., upon the satisfaction of VCLF’s \$6,000,000 obligation under Paragraph 13 of the Selenium Settlement Agreement.
3. A Judgment in favor of Plaintiffs and Headwaters in the amount of VCLF’s arrearage as of the date of the entry of the Judgment.

Plaintiffs and Headwaters further respectfully request that the Court enter an order awarding them attorney fees and costs related to this motion, and directing the Parties to submit briefing on the appropriate amount of such an award once VCLF’s obligations under Paragraph 13 of the Selenium Settlement Agreement have been fully performed.

DATED: March 15, 2019

Respectfully submitted,

**/s/ Derek O. Teaney**

DEREK O. TEANEY (W. Va. Bar No. 10223)

APPALACHIAN MOUNTAIN ADVOCATES, INC.

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Inc.*

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**CERTIFICATE OF SERVICE**

I, Derek O. Teaney, do hereby certify that on March 15, 2019, I electronically filed the foregoing document the Clerk of the Court using the CM/ECF system, which will send notification of the filing to the CM/ECF participants in the case. I further certify that on March 15, 2019, I also served the foregoing on Timothy Dixon, counsel for Clarke Investments, LLC, at timothy.dixon@clarkeinvestments.com pursuant to his agreement to accept service by electronic mail.

**/s/ Derek O. Teaney**

**DEREK O. TEANEY (W. Va. Bar No. 10223)**